

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
Amendment of Section 76.51 )  
of the Commission's Rules to )  
Include Baytown, Galveston, )  
Alvin, Rosenberg, Katy, and )  
Conroe, Texas in the Houston, )  
Texas Television Market )

CS Docket No. 96-139

To: William H. Johnson  
Deputy Chief, Cable Services Bureau

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COMMENTS OF VVI BAYTOWN, INC.

VVI Baytown, Inc., licensee of station KVVV(TV), Baytown, Texas, hereby submits its comments in response to the Notice of Proposed Rule Making, released June 24, 1996 in the above-captioned proceeding.

BACKGROUND

VVI Baytown acquired station KVVV, Channel 57 (then KRTW(TV)) from Pray, Inc., in 1994. On December 3, 1993, Pray, Inc. filed the instant petition for rule making to add Baytown to the Houston, Texas television market. In addition, the petitioner sought Commission consideration of amending Section 76.51 to include the other communities in the Houston ADI with licensed television stations: Galveston, Rosenberg, Alvin, Katy, and Conroe. As the current licensee of the Baytown station, VVI Baytown supports the creation of a "hyphenated market."

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The Pray, Inc. petition established the proximity of Baytown to Houston by demonstrating that: (1) Baytown is only 24 miles from Houston; (2) Baytown is the third largest city in Harris County and Houston is the largest; (3) KVVV serves Houston with a city grade contour and lies within the city-grade contours of all of the Houston commercial stations; and (4) nearly all (98%) of the Houston 35-mile zone is encompassed in Baytown's Grade B contour. The geographic proximity and the coverage patterns clearly demonstrate a shared market.

With regard to the other communities in the Houston ADI, the original petition further showed that (1) Alvin and Galveston are within Baytown's 35-mile zone, and Alvin, Katy and Rosenberg are within Houston's 35-mile zone; (2) the zones for Galveston and Conroe include portions of Houston; (3) Baytown lies within the city-grade contours of the stations licensed to Rosenberg, Galveston, and Alvin and KVVV serves each of these communities with a city-grade signal; (4) the Grade B contour of KVVV encompasses all of the communities except Conroe; (5) the Grade B contours of each of the stations (with possible exception of Conroe) substantially overlap. Thus, the petition demonstrated that all of the stations licensed to the Houston ADI serve substantial areas in common and compete throughout the market with each other for programming and viewers.

In issuing the Notice of Proposed Rulemaking, the Commission tentatively concluded that the petition provided sufficient information to indicate that "the television stations licensed to Houston, Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe do compete for audiences and advertisers throughout much of the proposed combined market area

and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to the market designation and the market as a whole.” The Commission also tentatively found that the proposed addition of these communities to the Houston television market would be consistent with its precedent in the redesignation of hyphenated television markets.

### ARGUMENT

Based on the showings in the original petition, the Commission should amend Section 76.51 to add Baytown and the other communities to the Houston television market. Hyphenation of the Houston market to include Baytown, Alvin, Katy, Rosenberg and Galveston is fully consistent with Commission precedent. See Amendment to Section 76.51 (Castle Rock-Denver), 10 FCC Rcd 10616 (1995); Amendment to Section 76.51 (Greensburg-Pittsburgh), 10 FCC Rcd 9806 (1995); Amendment to Section 76.51 (Anaheim-Los Angeles-San Bernardino-Corona-Fontana-Riverside), 10 FCC Rcd 9298 (1995).

Conroe is also sufficiently proximate to Baytown and Houston to be included in the hyphenated Houston television market. Conroe is within the Houston ADI and less than 40 miles from Houston and 50 miles from Baytown. The geographic distance is well within precedent for a hyphenated market. See Amendment to Section 76.51 (Fayetteville-Raleigh-Durham-Goldsboro), 11 FCC Rcd 4842 (1996) (Fayetteville within ADI and 59 miles and 72 miles from Raleigh, Durham respectively); Amendment of Section 76.51 (Goldsboro-Raleigh-

Durham), 9 FCC Rcd 4387 (1994) (Goldsboro within ADI and 51 miles and 74 miles from Raleigh, Durham respectively. Conroe serves Houston with a Grade A contour and Baytown is within its Grade B contour.<sup>1/</sup> Conroe is within the Grade B contours of the stations in Alvin, Katy, and Rosenberg and their Grade B contours overlap.<sup>2/</sup> Hence the coverage patterns of these communities include much of the same territory. See Amendment to Section 76.51 (Lakeland-Tampa-St.Petersburg-Clearwater), 10 FCC Rcd 5580 (1995) (hyphenated market shown where Lakeland provides city grade coverage to part of Tampa, Grade A to all of Tampa, Grade B to St. Petersburg and substantially overlap with Tampa and St. Petersburg stations; even though Clearwater is beyond Lakeland Grade B, all are part of same ADI).

As noted in the Notice of Proposed Rulemaking, the cable copyright licensing liability concern raised in the petition has largely been rendered moot by intervening legislation.<sup>3/</sup> However, as found in a number of recent cases, that issue is not essential to establish the need for hyphenation of a television market. Indeed, it is sufficient to demonstrate that the television stations in the communities compete for programming, audience, and advertisers within the proposed combined market area, thereby warranting the equalization of the regulatory status of these stations. It is the rationalization of the competitive circumstances that constitutes the public benefit intended by Congress in providing for revisions to the market list.

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<sup>1/</sup> See Television and Cable Factbook No. 64, at A-1084 (1996).

<sup>2/</sup> Id. at A-1079, A-1081, A-1089.

<sup>3/</sup> See Satellite Home Viewer Act of 1994, amending § 111(f) of Title 17 to provide that a station within the same ADI as a cable system is no longer considered a distant signal for purposes of compulsory copyright licensing liability.

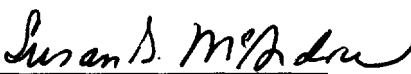
See Amendment to Section 76.51 (Fayetteville-Raleigh-Durham-Goldsboro), 11 FCC Rcd 4842 (1996); Amendment to Section 76.51 (Castle Rock-Denver), 10 FCC Rcd 10616 (1995); Amendment to Section 76.51 (Greensburg-Pittsburgh), 10 FCC Rcd 9806 (1995); Amendment to Section 76.51 (Anaheim-Los Angeles-San Bernardino-Corona-Fontana-Riverside), 10 FCC Rcd 9298 (1995); Amendment to Section 76.51 (Lakeland-Tampa-St.Petersburg-Clearwater), 10 FCC Rcd 5580 (1995); Amendment of Section 76.51 (Goldsboro-Raleigh-Durham), 9 FCC Rcd 4387 (1994).

#### CONCLUSION

For the foregoing reasons, the Commission should amend Section 76.51 to add Baytown, Alvin, Conroe, Galveston, Katy, and Rosenberg to the Houston, Texas television market.

Respectfully submitted,

VVI BAYTOWN, INC.

By:   
Susan D. McAndrew

Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037-1420  
(202) 663-6096

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Attorney for VVI Baytown, Inc.